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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte HANDONG WU and ZBIGNIEW SUFLETA

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Appeal 2009-000455
Application 09/609,690
Technology Center 2400

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Decided: May 7, 2010

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Before JOSEPH L. DIXON, THU A. DANG, and
STEPHEN C. SIU, *Administrative Patent Judges.*

DIXON, *Administrative Patent Judge.*

DECISION ON APPEAL

I. STATEMENT OF THE CASE

The Patent Examiner rejected claims 1-18 and 30. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

The invention at issue on appeal relates to:

[a] packet processing device includes a control logic processor
for filtering packets according to a set of stored rules and an
arithmetic logic processor for executing packet processing
instructions based on the content of the packet. The control
logic processor spawns a new thread for each incoming packet,
relieving the arithmetic logic processor of the need to do so.
The control logic processor and the arithmetic logic processor
preferably are integrated via a thread queue. The control logic
processor preferably assigns a policy to each incoming packet.
A policy action table stores one or more policy instructions
which may be easily changed to update policies to be
implemented. The policy action table preferably maps a virtual
packet flow identification code to the physical memory address
of an action code and a state block associated to the
identification code. The arithmetic logic processor processes a
packet based on the stored policy assigned to that packet.

(Abstract.)

B. ILLUSTRATIVE CLAIM

Claim 1, which further illustrates the invention, follows.

1.   An apparatus for processing data packets, comprising:

a first data processing unit adapted to filter incoming packets;

an addressable memory unit in which a plurality of instruction
sets for packet processing are stored;

a second data processing unit adapted to process incoming
packets according to one of said plurality of instruction sets after the

filtering, based on a thread assigned to the incoming packets by the first data processing unit; and

a data bus connecting the addressable memory unit and the first and second data processing units.

C. REFERENCES

The Examiner relies on the following references as evidence:

Scales	U.S. 5,761,729	June 2, 1998
Irwin	U.S. 6,393,026 B1	May 21, 2002
		(filed Sept. 17, 1998)
Kadambi	U.S. 6,850,521 B1	Feb. 1, 2005
		(filed Mar. 17, 2000)

D. REJECTIONS

Claim 1 stands rejected under 35 U.S.C. §102(e) as being anticipated by Irwin.

Claims 2-16 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Irwin in view of Kadambi.

Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Irwin and Kadambi in view of Scales.

II. ISSUE

Has the Examiner erred in relying upon the teachings of Irwin to meet the claimed "a first data processing unit adapted to filter incoming data packets?"

Has the Examiner erred in relying upon the teachings of Irwin to meet the claimed "second data processing unit adapted to process incoming packets according to one of said plurality of instruction sets after the filtering, based on a thread assigned to the incoming packets by the first data processing unit?"

Has the Examiner erred in relying upon the teachings of Irwin to meet the claimed "a data bus connecting the addressable memory unit and the first and second data processing units?"

III. PRINCIPLES OF LAW
35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). "[T]he Examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore, "'there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness' . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

The question of obviousness is "based on underlying factual determinations including . . . what th[e] prior art teaches explicitly and inherently . . . ." *In re Zurko*, 258 F.3d 1379, 1383 (Fed. Cir. 2001).

A general allegation in the Brief that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes over the cited references is insufficient. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. *See* 37 CFR § 41.37(c)(1)(vii). Appellants' appeal is based on a series of conclusory arguments presented in the Brief. This form of argument is ineffective in establishing the patentability of the claims on appeal. *See Ex parte Belinne*, No. 2009-004693, slip op. at 7-8, http://www.uspto.gov/ip/boards/ bpai/decisions/inform/fd09004693.pdf (BPAI Aug. 10, 2009) (informative).

IV. ANALYSIS

Anticipation

At the outset, we note that Appellants' arguments directed towards independent claim 1, which is a rejection based upon anticipation, are mostly drafted in language directed toward an obviousness rejection. For example, Appellants use the language "fails to even suggest . . . ." "Appellants assert that it would be an obvious to include filtering . . . " and "it would be unobvious to modify Irwin to . . . ." Finally, with respect to the data bus Appellants argue that "Irwin fails to teach a data bus connecting an addressable memory unit to the first and second data processing units."

(App. Br. 11-13). Therefore, a majority of Appellants' arguments are directed to the incorrect statutory basis for the rejection except for the "data bus" argument.

Therefore, we will start with the "data bus" argument which addresses the correct statutory ground of rejection, the Examiner in the responsive arguments at pages 17-18 of the Answer further embellishes the rejection and relies upon the teachings of Irwin at columns 6 and 7 which teach that "the addressable memory and the first and second processing units are connected by a data bus as they all load data and data is transferred from one to another and bus must be connected by a data bus. The data bus is inherently necessary." (Answer 17-18). We agree with the Examiner that a data bus would necessarily be present to transfer the data. Therefore, Appellants have not shown error in the Examiner's showing of anticipation based upon this argument.

With respect to the remainder of Appellants' arguments with respect to independent claim 1, Appellants assert that the excerpts relied upon by the Examiner concerning the processing for forwarding a data packet as taught by Irwin in columns 5 and 6 fails to suggest the claimed "filter[ing] incoming packets." (App. Br. 10-11). While Appellants' argument is drafted with respect to obviousness and the rejection is based upon anticipation, we will attempt to loosely interpret Appellants' arguments as directed towards anticipation.

At the outset, we find Appellants' lengthy Brief and Reply Brief to be rather repetitive and cumulative in their presentation of their case and find very little analysis and explanation beyond merely cutting and pasting from the record and the reference. We find this presentation to obscure or

obfuscate Appellants' position rather than provide a brief focused argument to identify and differentiate the claimed invention from prior art teachings.

With respect to argued elements of the claimed invention, Appellants repeat the teachings of the reference a number of times (in verbatim and slightly rewritten) with respect to each teaching relied upon by the Examiner and then summarily concludes that the teachings fail to suggest the claimed limitation. (App. Br. 10-13). However, Appellants provide no further substantive commentary with respect to this limitation of the claim to distinguish this limitation.

As Appellants are making a general allegation of patentability without specifically pointing out how the claim language patentably distinguishes over the applied art, Appellants' argument cannot establish Examiner error. *See* 37 C.F.R. 1.111(b); *see also* 37 C.F.R. § 41.37 (c)(1)(vii) ("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.").

The Examiner identifies in the responsive arguments at pages 16-17 that the definition of "filtering" is a device or a program that separates data, which is exactly what the forwarding of Irwin is doing wherein Irwin teaches at column 6 assigning a program counter to incoming packets and forwards them using the forwarding program.

The Examiner further identifies at page 17 of the Answer that Appellants' arguments with respect to column 1 of Irwin are directed to a separate prior art discussion which is not relied upon by the Examiner in the anticipation rejection, but this teaching additionally teaches forwarding through the use of different interfaces which the Examiner equates to

filtering. We agree with the Examiner's reasoning that this portion of Irwin also teaches filtering of incoming data packets.

Appellants have identified no express definition of "filtering" in their Specification nor have Appellants presented any express definition in their Briefs as to the proper interpretation for "filtering." Therefore, we accept the Examiner's reasonable interpretation and the application of Irwin thereto.

In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellants reiterate the teachings of Irwin at page 12 of the Brief and contend that Irwin fails to teach or suggest the claimed "a second data processing unit adapted to process incoming packets according to one of said plurality of instruction sets after the filtering, based on a thread assigned to the incoming packets by the first data processing unit." Again, Appellants reiterate that Irwin fails to suggest any sort of "' filtering,' as claimed by appellant[s], let alone in the specific context claimed by appellant[s]." (App. Br. 13). Here, Appellants do not identify what specific "context" is intended in the argument. We find no specific context or definition of the filtering in the language of independent claim 1.

Appellants' arguments appear to be based upon the difference in interpretation of what is "filtering," as discussed above. Appellants' argument does not show error in the reasonableness of the Examiner's interpretation and showing. Therefore, Appellants' argument has not shown error in the Examiner's showing of anticipation of independent claim 1, and we will sustain the rejection thereof.

Obviousness

With respect to dependent claims 2 and 16, the Appellants summarily argue that the "prior art excerpts, as relied upon by the Examiner, fail to teach or suggest <u>all</u> of the claim limitations, as noted above" and the claims are not met by the prior art for the reasons argued with respect to Issue #1, Group #1. (App. Br. 14-15). Since we did not find Appellants' arguments persuasive with respect to independent claim 1 and found no elements of the claimed invention lacking, we similarly find Appellants' reliance upon the same arguments unavailing with respect to obviousness. The Examiner argues that Appellants have presented no arguments. (Answer 18). Therefore, Appellants' general allegation does not show error in the Examiner's reasoned conclusion of obviousness, and we will sustain the rejection of dependent claim 2 and dependent claim 16 grouped therewith.

With respect to dependent claims 3, 5, 13, and 14, Appellants have argued the claims as a group, and we will select dependent claim 3 as the representative claim for the group. Appellants reiterate the teachings of Irwin and Kadambi. (App. Br. 15-16). The Examiner maintains that Appellants do not provide arguments other than stating the portions relied on in Kadambi do not disclose the claim. We agree with the Examiner. The Examiner further identifies column 35, lines 57-64, of Kadambi to teach a rules table which the Examiner relies upon as the claimed "policy action table" which stores at least one data processing policy. (Answer 18). We find the Examiner's position to be reasonable, and we find Appellants' general statement of a lack of teaching or suggestion by the relied upon teachings to be unsupported and unavailing. Therefore, we conclude that Appellants have not shown error in the Examiner's reasoned conclusion of

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obviousness, and we will sustain the rejection of dependent claims 5, 13, and 14 grouped therewith by Appellants.

With respect to dependent claim 4, Appellants reiterate the teachings of Kadambi. (App. Br. 17). The Examiner maintains that Appellants do not provide arguments other than stating the portions relied on in Kadambi do not disclose the claim. (Ans. 19). We agree with the Examiner. We find the Examiner's position to be reasonable, and we find Appellants' general statement of a lack of teaching or suggestion by the relied upon teachings to be unsupported and unavailing. Therefore, we conclude that Appellants have not shown error in the Examiner's reasoned conclusion of obviousness, and we will sustain the rejection of dependent claim 4.

With respect to dependent claims 6-12, Appellants have argued the claims as a group, and we will select dependent claim 6 as representative claim for the group. Appellants reiterate the teachings of Kadambi. (App. Br. 18-19). The Examiner maintains that Appellants do not provide arguments other than stating the portions relied on in Kadambi do not disclose the claim. (Ans. 20). We agree with the Examiner. Therefore, we conclude that Appellants have not shown error in the Examiner's reasoned conclusion of obviousness, and we will sustain the rejection of dependent claim 6 and claims 7-12 which have not been separately argued and grouped therewith by Appellants.

With respect to dependent claim 15, Appellants again reiterate the teachings of Kadambi. (App. Br. 20). The Examiner maintains that Irwin and Kadambi teach a temporary storage of packets before processing by the second data processing unit. The Examiner additionally identifies column 30 of Kadambi which discloses priority queues and column 10 of Irwin

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which discloses a packet buffer to further buttress the Examiner's initial showing. (Ans. 20). We find the Examiner's initial reliance upon parsing to teach and suggest a temporary storage before processing by the second data processing unit and the additional teachings further evidence temporary storage before processing by the second data processing unit. We find no limitation on the duration of time wherein most intermediary processing would encompass some buffering or temporary storage meeting the broad language of the claim. Therefore, Appellants have shown no error in the Examiner's reasoned conclusion of obviousness, and we will sustain the rejection of dependent claim 15.

With respect to independent claim 30, the Examiner sets forth the grounds of rejection at pages 10-14 of the Answer and responsive arguments at pages 21-26 of the Answer. Appellants again reiterate the teachings of Irwin and Kadambi for each of the argued claim limitations at pages 20-30 of the principal Brief and Appellants reiterate the claim limitations and generally assert that the teachings of the references do not suggest the claimed limitations. As discussed above, we find the above presentation of arguments to be unpersuasive of the error in the Examiner's rejection. As discussed above with respect to independent claim 1, we find that Irwin does teach "filtering incoming packets" which appears to be the base premise of Appellants' arguments. We find the Examiner has addressed all limitations of the claim and Appellants have not identified any substantive error therein. Therefore, we will sustain the rejection of independent claim 30.

With regards to dependent claims 17 and 18, Appellants contend that the claims are not met by the prior art for the reasons argued with respect to Issue #2, Group #1 which refers to dependent claim 2 (and did not set forth separate arguments for patentability) which incorporated the arguments made with respect to independent claim 1 based upon anticipation. (App. Br. 30). Since we did not find those arguments persuasive, and Appellants have not set forth separate arguments for patentability, we similarly do not find this argument persuasive with respect to dependent claim 17 and dependent claim 18 which is grouped therewith.

Appellants' Reply Brief is drafted in the same format as Appellants' principal brief whereby Appellants repeat the teachings of the references and summarily and generally conclude that the references do not teach or suggest each of the argued limitations as we discussed above. We have considered Appellants' generalized contentions in the Reply Brief and find them unavailing. As Appellants are making general allegations of patentability without specifically pointing out <u>how</u> the claim language patentably distinguishes over the applied art, Appellant's argument cannot establish Examiner error. *See* 37 C.F.R. 1.111(b); *see also* 37 C.F.R. § 41.37 (c)(1)(vii) ("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.").

V. CONCLUSION

For the aforementioned reasons, we conclude that the Examiner has not erred in the rejection of independent claim 1 based upon anticipation and

the Examiner has not erred in the rejection of independent claim 30 and
dependent claims 2-18 based upon obviousness.

VI. ORDER

We affirm the anticipation and obviousness rejections of claims 1-18
and 30.

AFFIRMED

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